United Nations CCPR/C/SR.2434

International Covenant on Civil and Political Rights

Distr.: General
11 April 2007

Original: English

Human Rights Committee
Eighty-ninth session

Summary record (partial)* of the 2434th meeting
Held at Headquarters, New York, on Monday, 19 March 2007, at 10 a.m.

Chairperson: Mr. Rivas Posada

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* No summary record was prepared for the rest of the meeting.

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07-27319 (E)

The meeting was called to order at 10.10 a.m.

Organizational and other matters (*continued*)

Discussion on national human rights institutions (HRI/MC/2007/3)

1. **Mr. Gillibert** (Secretary of the Committee) drew attention to document HRI/MC/2007/3, which contained the conclusions of the international round table on the role of national human rights institutions and treaty bodies that had taken place in Berlin on 23 and 24 November 2006. The annex to that document contained proposals on a harmonized approach to treaty-body engagement with national human rights institutions (NHRIs). Ms. Chanet had been unable to attend the round table, and the Committee should therefore take the current opportunity to discuss the proposals so that its views could be transmitted to the forthcoming sixth inter-committee meeting and nineteenth meeting of chairpersons.

2. **Ms. Majodina** said that, as a full-time member of the South African Human Rights Commission, she welcomed the opportunity to discuss interaction between the treaty bodies and NHRIs. However, referring to paragraph 3, third subparagraph, of the action points outlined in document HRI/MC/2007/3, she requested clarification of the phrase "NHRIs should contribute in an appropriate manner to the preparation of State party reports". With reference to paragraph 3, fourth subparagraph, of the action points, she wondered whether NHRIs should also be permitted to make oral presentations during treaty bodies' consideration of State party reports. More often than not, those institutions were responsible for monitoring State party compliance with international human rights instruments, and she felt that it would be beneficial for all concerned, particularly in situations where Governments were uncomfortable with the role of national human rights bodies, to have the opportunity to enter into a dialogue.

3. **Mr. Kälin** stressed the importance of engaging with NHRIs, but pointed out that the proposals in the annex lacked clarity on a number of issues. First, the draft should state unequivocally that the treaty bodies would enter into relationships only with NHRIs established in accordance with the Paris Principles. Secondly, further thought must be given to paragraphs 4 and 5 of the annex, which seemed to suggest that interaction between the treaty bodies and NHRIs should be formalized. Some Governments might not welcome that development, and he was not sure whether the Covenant provided for such arrangements. Lastly, he was unclear as to the meaning of paragraph 8 of the annex. In particular, he did not see how NHRIs could be involved in the Committee's discussion of State party reports with the Special Rapporteur on follow-up to concluding observations.

4. **Mr. Khalil** said that the Committee should give some thought to how the round table's proposals might be perceived by NHRIs. In Egypt, for example, the National Human Rights Council continued to face criticism from the opposition and other human rights bodies because of its alleged links to the Government. Although NHRIs were the real propagators of a human rights culture, and direct contact between those institutions and the Human Rights Committee was to be encouraged, their involvement in the preparation of State party reports would pose problems. The submission of shadow reports might be a more practical solution.

5. **Mr. Bhagwati** said he was in favour of strengthening cooperation between NHRIs and the Committee, and suggested that individual Committee members with ties to particular countries should collaborate more closely with relevant national bodies. Shadow reports on States parties' implementation of the Covenant were a useful way of acquiring a fuller picture of the human rights situation on the ground, and the submission of such reports by NHRIs should be encouraged.

6. **Mr. O'Flaherty** welcomed the initiative under discussion, and endorsed Mr. Kälin's comments on the draft proposals. However, he stressed that the Committee should not preclude entering into dialogue with institutions that did not comply fully with the Paris Principles. The draft text should also have included some proposals geared specifically towards NHRIs, particularly in the area of follow-up, which tended to take place at the national, rather than the international, level. In that connection, and with reference to paragraph 8 of the annex, he pointed out that the proper interlocutor for national follow-up activities was the Office of the United Nations High Commissioner for Human Rights (OHCHR).

7. In closing, he suggested that the Committee should also give thought to adopting a harmonized approach to relationships with non-governmental organizations (NGOs) and other civil society associations.

8. **Mr. Amor** pointed out that not all NHRIs were established in accordance with the Paris Principles. However, that was no reason to limit cooperation. Conformity with the Principles was not uniform, and the Committee must guard against selectivity and exclusion in order to ensure that its voice was heard in as many places as possible.

9. NHRIs should enjoy a privileged relationship with the treaty bodies, but formalizing that relationship might lead to the disengagement of national Governments. Every effort should be made to avoid such an occurrence.

10. **Ms. Wedgwood** said that States should be encouraged to establish NHRIs. However, in view of the Human Rights Council's equivocal stance on its own interaction with NGOs, she was concerned about creating a "negative pregnant", i.e. a situation in which the treaty bodies, by formalizing their relationships with NHRIs, could be perceived as expressing tacit support for countries that did not recognize NGOs. States might, for instance, interpret paragraph 5 of the annex to mean that NGO contributions to State party reports must first be endorsed by NHRIs.

11. She wondered whether some of the proposals, especially those relating to lobbying, might create difficulties for NHRIs, whose mandates did not necessarily allow for such activities. Referring to paragraph 9 of the annex, she expressed the hope that national bar associations would also be involved in the elaboration of general comments. Lastly, she stressed that the Committee's consideration of country reports was an interactive process which could not be fully reflected in its final reports. Accordingly, in the context of any effort to formalize the relationship between the Committee and NHRIs, and with a view to disseminating information about the Committee's activities, it might be useful to provide such institutions with sound recordings of the relevant meetings.

12. **The Chairperson** stressed that the proposals before the Committee were merely a first attempt to stimulate debate on the question of the relationship between NHRIs and the treaty bodies. He invited the Secretary of the Committee to respond to members' comments and questions.

13. **Mr. Gillibert** (Secretary of the Committee), referring to Mr. O'Flaherty's remarks, said that the situation of NGOs as compared to NHRIs was objectively different vis-à-vis the Committee: NGOs could participate in formal, confidential briefings, whereas NHRIs could only organize informal confidential briefings. He reminded the Committee that neither the Covenant nor the Committee's rules of procedure referred to the participation of NHRIs, but that, over time, the involvement of NGOs had become an established practice. The round table recommended a higher level of participation by such institutions than was currently granted to NGOs by proposing that the Committee should give them special status. Such recognition would formalize the practice initiated by the Committee on the Elimination of Racial Discrimination (CERD), which had not been provided for by its rules of procedure, and was thus considered a precedent. He wondered whether other treaty bodies, in particular the Human Rights Committee, wished to follow suit: would the Committee allow NHRIs to take the floor during the discussion of a State party's periodic report, thus transforming that exercise into a tripartite dialogue? Furthermore, as several members had raised concerns about the lack of conformity of some NHRIs to the Paris Principles, he wondered how the Committee planned to determine such conformity and asked if the Committee would in all cases be ready to grant such institutions a special status, regardless of whether they were in line with the Principles. With respect to reporting procedures, he had understood the recommendations of the round table to mean not that States parties should control the information supplied by NHRIs, but rather that they should not be closed to alternative information supplied by such institutions and by NGOs, thus ensuring that their reports were reality-based.

14. **The Chairperson** said the fact that the Human Rights Committee had not had a representative at the round table made its conclusions even more provisional. Many of the issues raised thus far would no doubt be discussed further; for the time being, it would be premature to support the proposals set out in the annex to the document under discussion.

15. **Mr. O'Flaherty** supported the Chairperson's remarks and observed that harmonized approaches were best derived from common practice over a period of time but that insufficient time had yet elapsed for the purpose. He suggested that the proposals should be circulated to civil society participants who normally attended the inter-committee meeting to obtain their comments.

16. **The Chairperson** suggested that the proposals should not be circulated to civil society organizations before another inter-committee meeting had been held to clarify the matter.

17. **Ms. Wedgwood** said that she supported the circulated of the round-table proposals sooner rather than later, as the comments of NGOs would be useful in improving the final text on a harmonized approach. She wondered whether the proposals constituted an internal or external document. The NGOs were better placed to describe their relationship to the NHRIs in their own countries and to know how many conformed to the Paris Principles.

18. **Sir Nigel Rodley** said he was concerned that the participation of an NHRI in one of the Committee's confidential hearings, whether or not it had been formally recognized as complying with the Paris Principles, might have a negative effect on the participants for whom the hearing had been intended. If NHRIs were to have such a role, another meeting should perhaps be held specifically to allow their participation, which would entail further difficulties. He requested more information on the CERD precedent mentioned by the Secretary. In addition, the round table meeting seemed a rather small gathering to have come up with such a major document. He was in favour of more structured, balanced discussion of the issues at hand before deciding if and how the Committee should adjust its practice to involve some or all NHRIs in its work.

19. **The Chairperson** reiterated that further discussion of the proposals was required and that it was too early to circulate them widely.

20. **Mr. Amor** requested the Secretary to provide a list of participants in the inter-committee meeting. He stressed that a pragmatic approach was needed: questions would be dealt with as they arose and rules should follow, rather than precede, practice.

21. **Ms. Majodina**, responding to Sir Nigel Rodley's question about CERD, said that the Third Committee had invited both NHRIs and NGOs to produce shadow reports. In the case of South Africa, the South African Human Rights Commission had held consultations with the Government and NGOs, and its report had been widely distributed prior to its presentation to the Third Committee; furthermore, the Commission had been given a chance to consult the Committee at a pre-sessional briefing. Most encouraging had been the opportunity to summarize the Commission's shadow report in the presence of the State party. However, she shared the Committee's view that some caution had to be exercised, given that not all NHRIs complied with the Paris Principles. Those NHRIs that had aligned themselves with their Governments would not necessarily provide quality information. She suggested that the matter should be placed before NHRIs collectively, for instance at the yearly meeting of the International Coordinating Committee of National Institutions. Doing so might also resolve the problem of representativeness. The question of which bodies should be entitled to what kinds of interaction with the Human Rights Committee should also be discussed at that level so that the institutions concerned could take an informed position regarding relations with the Committee. Finally, the South African Human Rights Commission was a completely independent institution, but the same was not true of many other developing countries. The dynamics of each NHRI should be taken into consideration when deciding on the appropriate type of interaction.

22. **Mr. Pérez Sánchez-Cerro** said that, generally, NHRIs depended on their respective Governments and their membership was therefore appointed rather than elected. For that reason, NHRIs frequently defended their Government's points of view rather than an objective one, although there were exceptions. If all NHRIs complied with the Paris Principles, there would be de facto harmonization of their work with that of NGOs but in reality, there was no way to enforce such cooperation. In the document before the Committee, there was little reference to NGOs, but there should be more emphasis on coordination between NGOs and NHRIs. He was in favour of circulating the round-table proposals to NGOs and stressed that cooperation should include all such institutions and organizations.

23. **The Chairperson** said that it was important to determine the position of other treaty bodies in order to establish a basis for a harmonized approach; that would no doubt be one of the major topics debated at the inter-committee meeting, at which the Committee's representative would be ready to summarize the views expressed by members.

The discussion covered in the summary record ended at 11.15 a.m.